

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

ORDER

Plaintiff,

09-cr-59-bbc

v.

MICHAEL D. BALL,

Defendant.

On June 14, 2010, defendant Michael D. Ball filed a motion to withdraw his guilty plea, dkt. #57. In a June 16, 2010 order, I advised defendant that although he characterized his motion as not brought under certain provisions of 28 U.S.C. § 2255, it is a motion for modification of his sentence and must be brought pursuant to 28 U.S.C. § 2255. Therefore, I characterized his motion as one for modification of sentence under 28 U.S.C. § 2255, as I am required to do under Melton v. United States, 359 F.3d 855, 857 (7th Cir. 2004). Because in most cases a defendant has only one opportunity to file a § 2255 motion, I gave defendant until July 30, 2010, to state whether he wished to withdraw his motion, proceed with it as it was or revise it to include additional claims.

On defendant July 1, 2010, defendant filed a document that appears to be a response

to the July 30, 2010 order. His response is difficult to follow; it consists of what appears to be a letter to the prosecutor in which defendant asks that his plea be “adjusted” because he was “threatened by the opposing party,” that he is entitled to a sentence reduction under the amendments to the crack cocaine sentencing guidelines and that he should be entitled to a trial by jury.

After examining defendant’s original motion and his response, I find that he has failed to show that his conviction is invalid in any respect. Therefore, defendant’s challenge to his conviction under § 2255 will be denied. Defendant should be aware he will not have an opportunity to file a second motion to modify or vacate his sentence except in unusual circumstances and then only after he has received permission from the Court of Appeals for the Seventh Circuit to do so. 28 U.S.C. § 2255(h). Any successive petitions he files in this court under § 2255 without a showing that he has received such permission will be dismissed for lack of jurisdiction.

ORDER

IT IS ORDERED that defendant Michael Ball’s motion to withdraw his guilty plea, dkt. #57, is re-characterized as a motion brought pursuant to 28 U.S.C. § 2255, and is DENIED. Any successive motion under § 2255 that defendant files in this court will be dismissed for lack of jurisdiction, unless it is accompanied by a showing that he has obtained

permission from the court of appeals to file a successive motion.

Entered this 12th day of August, 2010.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge